

AMENDED IN ASSEMBLY APRIL 1, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 906**

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**Introduced by Assembly Members Hill and Smyth**

February 26, 2009

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An act to amend Section ~~1092~~ *1091* of the Government Code, relating to conflict of interest.

LEGISLATIVE COUNSEL'S DIGEST

AB 906, as amended, Hill. Conflict of interest: ~~statute of limitations; remote interest in a contract.~~

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and ~~county~~ *city* officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. ~~A contract made in violation of any of these provisions may be avoided at the instance of any party except the officer interested in the contract. Existing law provides that the applicable statute of limitations for commencing an action to avoid a contract under this provision is 4 years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, the violation.~~

~~This bill would specify that the provision specifying the applicable statute of limitations for commencing that act applies to an action that was in violation of that prohibition and that was discovered, or in the exercise of reasonable care should have been discovered on or after January 1, 2003.~~

*Existing law defines what is a remote interest in a contract that does not present a prohibited conflict of interest under these provisions.*

*This bill would revise the definition of “remote interest” to include the interest of an officer or employee of a state, county, district, judicial district, or city who is also an employee or agent of an investor-owned utility, in a contract solely related to energy efficiency encouragement programs, under specified conditions.*

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1091 of the Government Code is amended  
2     to read:

3     1091. (a) An officer shall not be deemed to be interested in a  
4     contract entered into by a body or board of which the officer is a  
5     member within the meaning of this article if the officer has only  
6     a remote interest in the contract and if the fact of that interest is  
7     disclosed to the body or board of which the officer is a member  
8     and noted in its official records, and thereafter the body or board  
9     authorizes, approves, or ratifies the contract in good faith by a vote  
10    of its membership sufficient for the purpose without counting the  
11    vote or votes of the officer or member with the remote interest.

12    (b) As used in this article, “remote interest” means any of the  
13    following:

14    (1) That of an officer or employee of a nonprofit entity exempt  
15    from taxation pursuant to Section 501(c)(3) of the Internal Revenue  
16    Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except  
17    as provided in paragraph (8) of subdivision (a) of Section 1091.5.

18    (2) That of an employee or agent of the contracting party, if the  
19    contracting party has 10 or more other employees and if the officer  
20    was an employee or agent of that contracting party for at least three  
21    years prior to the officer initially accepting his or her office and  
22    the officer owns less than 3 percent of the shares of stock of the  
23    contracting party; and the employee or agent is not an officer or  
24    director of the contracting party and did not directly participate in  
25    formulating the bid of the contracting party.

26    For purposes of this paragraph, time of employment with the  
27    contracting party by the officer shall be counted in computing the  
28    three-year period specified in this paragraph even though the  
29    contracting party has been converted from one form of business  
30    organization to a different form of business organization within

1 three years of the initial taking of office by the officer. Time of  
2 employment in that case shall be counted only if, after the transfer  
3 or change in organization, the real or ultimate ownership of the  
4 contracting party is the same or substantially similar to that which  
5 existed before the transfer or change in organization. For purposes  
6 of this paragraph, stockholders, bondholders, partners, or other  
7 persons holding an interest in the contracting party are regarded  
8 as having the “real or ultimate ownership” of the contracting party.

9 (3) That of an employee or agent of the contracting party, if all  
10 of the following conditions are met:

11 (A) The agency of which the person is an officer is a local public  
12 agency located in a county with a population of less than 4,000,000.

13 (B) The contract is competitively bid and is not for personal  
14 services.

15 (C) The employee or agent is not in a primary management  
16 capacity with the contracting party, is not an officer or director of  
17 the contracting party, and holds no ownership interest in the  
18 contracting party.

19 (D) The contracting party has 10 or more other employees.

20 (E) The employee or agent did not directly participate in  
21 formulating the bid of the contracting party.

22 (F) The contracting party is the lowest responsible bidder.

23 (4) That of a parent in the earnings of his or her minor child for  
24 personal services.

25 (5) That of a landlord or tenant of the contracting party.

26 (6) That of an attorney of the contracting party or that of an  
27 owner, officer, employee, or agent of a firm that renders, or has  
28 rendered, service to the contracting party in the capacity of  
29 stockbroker, insurance agent, insurance broker, real estate agent,  
30 or real estate broker, if these individuals have not received and  
31 will not receive remuneration, consideration, or a commission as  
32 a result of the contract and if these individuals have an ownership  
33 interest of 10 percent or more in the law practice or firm, stock  
34 brokerage firm, insurance firm, or real estate firm.

35 (7) That of a member of a nonprofit corporation formed under  
36 the Food and Agricultural Code or a nonprofit corporation formed  
37 under the Corporations Code for the sole purpose of engaging in  
38 the merchandising of agricultural products or the supplying of  
39 water.

1 (8) That of a supplier of goods or services when those goods or  
2 services have been supplied to the contracting party by the officer  
3 for at least five years prior to his or her election or appointment  
4 to office.

5 (9) That of a person subject to the provisions of Section 1090  
6 in any contract or agreement entered into pursuant to the provisions  
7 of the California Land Conservation Act of 1965.

8 (10) Except as provided in subdivision (b) of Section 1091.5,  
9 that of a director of, or a person having an ownership interest of,  
10 10 percent or more in a bank, bank holding company, or savings  
11 and loan association with which a party to the contract has a  
12 relationship of borrower or depositor, debtor or creditor.

13 (11) That of an engineer, geologist, or architect employed by a  
14 consulting engineering or architectural firm. This paragraph applies  
15 only to an employee of a consulting firm who does not serve in a  
16 primary management capacity, and does not apply to an officer or  
17 director of a consulting firm.

18 (12) That of an elected officer otherwise subject to Section 1090,  
19 in any housing assistance payment contract entered into pursuant  
20 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.  
21 Sec. 1437f) as amended, provided that the housing assistance  
22 payment contract was in existence before Section 1090 became  
23 applicable to the officer and will be renewed or extended only as  
24 to the existing tenant, or, in a jurisdiction in which the rental  
25 vacancy rate is less than 5 percent, as to new tenants in a unit  
26 previously under a Section 8 contract. This section applies to any  
27 person who became a public official on or after November 1, 1986.

28 (13) That of a person receiving salary, per diem, or  
29 reimbursement for expenses from a government entity.

30 (14) That of a person owning less than 3 percent of the shares  
31 of a contracting party that is a for-profit corporation, provided that  
32 the ownership of the shares derived from the person's employment  
33 with that corporation.

34 (15) That of a party to litigation involving the body or board of  
35 which the officer is a member in connection with an agreement in  
36 which all of the following apply:

37 (A) The agreement is entered into as part of a settlement of  
38 litigation in which the body or board is represented by legal  
39 counsel.

1 (B) After a review of the merits of the agreement and other  
2 relevant facts and circumstances, a court of competent jurisdiction  
3 finds that the agreement serves the public interest.

4 (C) The interested member has recused himself or herself from  
5 all participation, direct or indirect, in the making of the agreement  
6 on behalf of the body or board.

7 (16) (A) *That of an officer or employee of a public entity who*  
8 *is also an employee or agent of the contracting party, if all of the*  
9 *following conditions are met:*

10 (i) *The contracting party is an investor-owned utility regulated*  
11 *by the Public Utilities Commission.*

12 (ii) *The contract solely provides the public entity with energy*  
13 *efficiency rebates or any other type of program to encourage*  
14 *energy efficiency by the public entity that is funded by utility*  
15 *ratepayers under the authority of the Public Utilities Commission.*

16 (iii) *The officer or employee of the public entity has not directly*  
17 *or indirectly participated in making the contract in any manner.*

18 (B) *For purposes of this paragraph, "public entity" means the*  
19 *state, county, district, judicial district, or city, as stated in Section*  
20 *1090.*

21 (c) This section is not applicable to any officer interested in a  
22 contract who influences or attempts to influence another member  
23 of the body or board of which he or she is a member to enter into  
24 the contract.

25 (d) The willful failure of an officer to disclose the fact of his or  
26 her interest in a contract pursuant to this section is punishable as  
27 provided in Section 1097. That violation does not void the contract  
28 unless the contracting party had knowledge of the fact of the remote  
29 interest of the officer at the time the contract was executed.

30 ~~SECTION 1. Section 1092 of the Government Code is amended~~  
31 ~~to read:~~

32 ~~1092. (a) A contract made in violation of Section 1090 may~~  
33 ~~be avoided at the instance of any party except the officer interested~~  
34 ~~therein. The contract shall not be avoided because of the interest~~  
35 ~~of an officer therein unless the contract is made in the official~~  
36 ~~capacity of the officer, or by a board or body of which the officer~~  
37 ~~is a member.~~

38 ~~(b) An action under this section shall be commenced within~~  
39 ~~four years after the plaintiff has discovered, or in the exercise of~~

1 ~~reasonable care should have discovered, a violation described in~~  
2 ~~subdivision (a):~~

3 ~~(e) The changes made to this section by Chapter 68 of the~~  
4 ~~Statutes of 2007 shall apply to an action that was in violation of~~  
5 ~~Section 1090 and that was discovered, or in the exercise of~~  
6 ~~reasonable care should have been discovered, on or after January~~  
7 ~~1, 2003.~~